



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2018-0091

RIN 1625-AA09

Drawbridge Operation Regulation; Petaluma River, Haystack Landing
(Petaluma), CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating schedule that governs the Northwestern Pacific (SMART) railroad bridge across the Petaluma River, mile 12.4, at Haystack Landing (Petaluma), CA. This action is necessary to coordinate vessel passage with the commencement of commuter rail traffic on a previously rarely used rail line and to reduce wear and tear of the drawspan. The proposed rulemaking would require vessels to provide a 30-minute advance notification for a bridge opening.

DATES: Comments and related material must reach the Coast Guard on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2018-0091 using Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section below for instructions on

submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Carl T. Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510-437-3516; e-mail Carl.T.Hausner@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
SMART	Sonoma-Marín Area Rail Transit
§	Section
U.S.C.	United States Code

II. Background, Purpose and Legal Basis

In 2015, the 1903 Northwestern Pacific (SMART) Swing Bridge across the Petaluma River, mile 12.4, at Haystack (Petaluma), CA was replaced with a single leaf bascule bridge in anticipation of the commencement of commuter rail traffic. The replacement bridge provides 87 feet of horizontal clearance fender-to-fender normal to the axis (centerline) of the channel and a vertical clearance of 3.6 feet at Mean High Water when closed and unlimited vertical clearance in the fully opened position.

Presently, in accordance with 33 CFR 117.187(a), the Northwestern Pacific (SMART) bridge shall be maintained in the fully opened position, except for the crossing of trains or for maintenance. Currently 32 commuter trains cross the bridge each day. Due to an increase in said rail traffic, SMART has requested the drawspan remain in the closed-to-navigation position during commute hours to avoid unnecessary bridge openings. The Petaluma River supports commercial

and recreational vessel traffic.

On October 22, 2015, SMART requested the Coast Guard consider changing the operating schedule of the drawspan to allow coordination of vessel passage with the commencement of commuter rail traffic on a previously rarely used rail line and to reduce wear and tear of the drawspan. The request would require vessels to provide an advance notice to the bridge tender for a bridge opening. Two test deviations were conducted to determine if a proposed operation regulation change would meet the reasonable needs of navigation while benefiting land traffic. The first test deviation was conducted March 19, 2018 through June 17, 2018 (83 FR 8936) and required vessels to provide a 2-hour advance notice to the drawtender for a bridge opening. The Coast Guard received five public comments during the first test deviation. After reviewing four comments and the drawtender logs, the Coast Guard determined the 2-hour advance notification would be an undue burden on waterway users and that a 30-minute advance notification may meet the reasonable needs of navigation while benefiting land traffic. The fifth comment was directed at the structural deficiency of a number of dams in the United States and was not pertinent to the test deviation. A second test deviation was conducted August 20, 2018 through October 18, 2018 (83 FR 39879) and required vessels to provide a 30-minute advance notice to the drawtender for a bridge opening. The Coast Guard received two comments during the second test deviation. The first comment was directed at future navigation on the Petaluma River and did not address the efficiency of the 30-minute notice and the second comment was unrelated to the test deviation. After reviewing the two comments and the drawtender logs, the Coast Guard

determined a 30-minute advance notice to the drawtender for a bridge opening would meet the reasonable needs of navigation while benefiting land traffic.

III. Discussion of Proposed Rule

The Coast Guard proposes to change the operating schedule that governs the Northwestern Pacific (SMART) Bridge across the Petaluma River, mile 12.4, at Haystack (Petaluma), CA.

This proposed rule would implement regulations for the bridge to open on signal from 3 a.m. to 11 p.m. when a 30-minute notification is given to the drawtender. At all other times the bridge will be maintained in the fully open-to-navigation position except for the crossing of trains or for maintenance.

This proposed rule change would meet the reasonable needs of navigation while benefiting commuter rail transportation and would reduce wear and tear of the drawspan.

In a related matter, SMART also owns the Blackpoint railroad bridge, mile 0.8, over the Petaluma River. This proposed rule would change the names of both the Northwestern Pacific railroad bridge, mile 0.8, at Blackpoint and the Northwestern Pacific railroad bridge, mile 12.4, at Haystack Landing (Petaluma) in the regulations to reflect that ownership.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic

impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,

because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under figure 2-1, paragraph (32)(e), of the Instruction.

A preliminary Record of Environmental Consideration and a Memorandum for the Record are not required for this proposed rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal

information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacynotice>.

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.187 to read as follows:

§ 117.187 Petaluma River

(a) The draw of the SMART Blackpoint railroad bridge, mile 0.8, at Blackpoint, shall be maintained in the fully open position, except for the crossing of trains or for maintenance. When the draw is closed and visibility from the drawtender's station is less than one mile up or down the channel, the drawtender shall sound two long blasts every minute. When the draw is reopened, the drawtender shall sound three short blasts.

- (b) The draw of the SMART Haystack Landing railroad bridge, mile 12.4

at Petaluma, shall open on signal from 3 a.m. to 11 p.m. if at least 30 minutes notice is given to the drawtender. At all other times, the draw shall be maintained in the fully open position, except for the crossing of trains or for maintenance. When the draw is closed and visibility from the drawtender's station is less than one mile up or down the channel, the drawtender shall sound two long blasts every minute. When the draw is reopened, the drawtender shall sound three short blasts.

(c) The draw of the Petaluma highway bridge at "D" Street, mile 13.7, at Petaluma, shall open on signal if at least four hours notice is given for openings from 6 a.m. to 6 p.m., and if at least 24 hours notice is given for openings from 6 p.m. to 6 a.m.

Dated: March 7, 2019

James B. Pruett
Captain, U.S. Coast Guard
Acting Commander, Eleventh Coast Guard District

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